Scott. II-27-10,002-4-3-28.

Law (General) (1928) Department.

Jmse SERIES.

G.O. No. 3545

DATED 22-10-1928

[Despatch Abstract.]

THE MULGENI RENT ENHANCEMENT ACT, 1920 - South Kanara - Coondapoor division - Retransfer of certain villages to ~~jurisdiction~~ jurisdiction of the Revenue Divisional Officer, Coondapoor.

1 LG 38584

C.F. 31

21.9.28

Law (General) DEPARTMENT.

CURRENT No.

Received ..... 192 *Registered* 192

Subject.

The Mulgeni Rent Enhancement Act, 1920 - (South Kanara) Coondapoor division - Retransfer of certain villages to the jurisdiction of the Revenue Divisional Officer, Coondapur.

ENCLOSURES.
No. .....
.....
Spare copies .....

Ref.A. No.3279-28-2.

Station Madras. *Dated the* 14th September 1928.

From

S.G.Sengodaiyan Esq., I.C.S.,
Secretary. Land Revenue.

~~The~~ Board of Revenue, ~~Revenue~~ Settlement, etc. ~~Separate Revenue.~~

~~Resolution~~
Reference. The Hon. Mr. H. A. B. Vernon, I.C.S.,
Commissioner of Land Revenue.

Read the following:-

Letter from C.G.Herbert Esq., I.C.S., Collector of South Kanara Ref.No.5809-28-A2 dated 28th August 1928.

REFERENCE:

(2) In G.O. No.1513 Mis. Law(General) dated 7th May 1924 certain villages of Udipi and Karkal taluks were placed with effect from 15-5-1924 under the Divisional officers of Mangalore and Puttur pectively for the purpose of disposal of applications then pending or to be filed under section 5 of the Mulgeni Rent Enhancement Act 1920. This was done in order to afford some relief to the Revenue Divisional

Divisional Officer, Coondapoor. The Collector of South Kanara now reports that the Divisional Officer, Coondapoor can himself deal with all the applications arising in his Division and requests the retransfer of the villages to his jurisdiction for purposes of the Act. The Board recommends the Collector's proposal.

2. A draft notification is enclosed for publication in the Fort Saint George Gazette. The village of Suratkal ~~is~~ is omitted from the schedule as it is in Mangalore taluk and was wrongfully included in the list received from the Collector and submitted to Government with the Board's Ref. No.A.1980/24-1 dated 28th April 1924. The spelling of the names of the villages in the enclosed draft notification is adopted from the printed alphabetical list of villages.

Secretary.

To the Secretary to Government,
Law (General) Department,
with a draft notification.

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Notification.

Under section 4 of the Mulgeni Rent Enhancement Act, 1920, the Local Government hereby directs that with effect from 1st October 1928, the undermentioned villages of Udipi and Karkal Taluks of the Coondapoor Revenue Divisional Officer's jurisdiction, which were placed under the Divisional Officers, Mangalore and Puttur respectively for the purpose of disposal of applications under section 5 of the said Act in Government order Mis.No.1513 Law (General) dated 7th May 1924 published at page 556 of Part I of the Fort St. George Gazette dated 13th May 1924 shall be retransferred to the jurisdiction of the Revenue Divisional Officer, Coondapoor for the purpose of disposal of applications now pending or to be filed under section 5 of the said Act.

Udipi Taluk.	Karkal Taluk.
Shirva	Suda
Mudabettu	Paladka
Padura	Belmannu
Innanje	Puchchamogaru
Uliyaragoli	Puttige
Belpu	Kallamundkuru
Kalturu	Hitte
Belle	Kalya
Palmaru	Ninjuru
Kutyaru	Mudakodi
Tenka	Bola
Mallaru	Arambodi
Bada	Kedinje
Matta	
Santura	
Nandikuru	

W

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Law (General) Dept.

Subject:- The Mulgeni Rent Enhancement Act of 20. South Kanara - Coondapoor division - Retransfer of certain villages to the jurisdiction of the Revenue Divisional officer Coondapoor.

(C No 3858 A) From the Board of Rev. Dept. Ref. No 3279-28-2 dy 14.5.28.

S

Please see the reference from the Board of Revenue with above subject in ref. The Boards recommendation may be accepted & the notification forwarded by it may be approved and published in the Fort St. George Gazette. Draft submitted.

The Case may go to Law (Drafting) for scrutiny

Ref. No 8A 1 CA 27-9-28. 27-5-28

Law (Aff.)

dy 1644 28.9.28.

Law (Drafting) Department.

The draft put up in this case does not follow the language of section 4 of the Mulgeni Rent Enhancement Act, 1920. Literally construed, section 4 does

not give power to the Local Government to transfer villages from the jurisdiction of one officer to another. That section merely says that the Local Government can confer all or any of the powers and impose all or any of the duties conferred or imposed on the Collector by this Act upon any officer or person by a notification in the official gazette. Moreover, it is doubtful whether the Local Government can vary a notification once issued under section 4. The Vulgeni Rent Enhancement Act, 1920 does not by itself give the power. If at all the power is given by any provision of law, it should be deemed to have been given by section 15 of the Madras General Clauses Act, 1891 which runs thus:--

> "Where an Act confers a power to make any rules or bylaws, or to issue orders, the power shall be Construed as including a power exercisable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend or vary the rules, bylaws or orders."

The present case can come only under the heading of "orders". It will be seen, however, from section 21 of the General Clauses Act (X of 1897) of the Governor General in Council and section 22 of the Bengal General Clauses Act, 1899 (Bengal Act I of 1899), that the term "order" does not always include a "notification" and it was considered necessary to introduce the words "notifications" by a special Amending Act, I of 1903, in section

21 referred to above. In the present case, a mere order is not enough; a notification is also necessary because section 4 distinctly refers to "a notification in the official gazette". If emphasis is to be placed on the fact that there must be an order before a notification can issue and that a notification is only a mode of publishing the order, then under section 15 of the Madras General Clauses Act, the Local Government may have power to vary the old order of 1924; but if the notification is considered as essential to give validity to the order then that section 15 may not be enough, and until that section is amended, or specific power is given to vary in this particular case, the variation now sought to be made will be of doubtful legality. May I suggest that as this raises a general question, the matter may be set at rest by a reference to the Advocate General? In any case, the notification should be redrafted and it may run thus:--

> "In exercise of the powers conferred by section 4 of the Mulgeni Rent Enhancement Act, 1920 (Madras Act XIII of 1920) read with section 15 of the Madras General Clauses Act, 1891 (Madras Act I of 1891), and in supersession of the order and notification of the Local Government in Law Department No.....dated.....published at page.....of the Fort St. George Gazette dated....., the Governor in Council is hereby pleased to confer and impose with effect from the 1st day of October 1928 on the Revenue Divisional Officer, Coondapoor, all the powers and all the duties conferred or imposed on the Collector by the first mentioned Act for the disposal of all applications filed and

now pending disposal before the Divisional Officers of Mangalore and Puttur under section 5 of the said Act or which may hereafter be filed under the said section 5 in respect of the lands in the villages of ② Udipi and Karkal taluks specified hereunder."

② To be specified before issue

Cvn
29.9.28

Law (Genl)

Agri -
1644
29. 9. 28.

Law (General) Deptt.

Submitted.

Please see Law (Drafting) notes at pp 1-4 supra. As suggested by Dd. Law Drafting at p 3 supra the case may go to the Advocate General Dd. for opinion on the points raised by Dd. Drafting.

The Advocate (General) may also be requested to suggest suitable amendments to the Madras General clauses Act ~~1899~~ 1891, if he is of opinion that an amendment of s 15 of the same act is necessary.

341
3 OCT 1928
BOMBAY

LG 3858A-2
F 10.28.

KA.
29.9.28.

Ag 1-10-28

Addl Govt no.

(2)
(with copy of G.O. 1513 Law (Genl) dt 7.5.24)

No. 218

O P I N I O N.

Ref:- Law General U.O. 3858 A-2 dated 1st Octr. 1928.

Mulgeni rent enhancement Act, South Kanara - Transfer of villages, Udipi and Karkal Taluks - Under section 4 - Notification published.

*****

Section 4 of the Madras Mulgeni Rent Enhancement Act (XIII of 1920) enacts that it shall be competent to the Local Government to confer all or any of the powers and to impose all or any of the duties conferred or imposed on the Collector by that Act upon any other officer or person by notification in the official gazette. Under section 15 of the Madras General Clauses Act (Act I of 1891) where an Act confers a power to make any rules or bye-laws or to issue orders, the power shall be construed as including a power exercisable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend or vary the rules, bye-laws or orders.

The question has been raised whether under section 4 of the Mulgeni Rent Enhancement Act read with section 15 of the Madras General Clauses Act, the Local Government could vary a notification once issued under section 4. It is true that the words "or issue notifications" do not occur in section 15 of the Madras General Clauses Act. It is also true that by Act I of 1903 the words "issue notifications" were added to section 21 of the General Clauses Act (X of 1897). These words also

6/

occur in section 22 of the Bengal General Clauses Act (Act I of 1899). I may add that these words also occur in section 21 of the Bombay General Clauses Act (I of 1904). But these words do not occur in the Punjab General Clauses Act (I of 1898 section 19). But as pointed out in Halsbury's Laws of England vol. 27, page 131, paragraph 234 - "interpretation clauses are often inserted ex abundanti cautela and are not necessarily to be construed as positive enactments." The premable to the Government of India Act (Act I of 1903) which added the words "notifications" to section 21 of the General Clauses Act (X of 1897) states that it was expedient that certain formal amendments should be made. The addition of the word "notifications" to section 21 of Act X of 1897 would thus seem to be a formal amendment and evidently made ex abundanti cautela. Section 15 of the Madras General Clauses Act contains the words "rescind, revoke" and also "amend or vary" - words used evidently ex abundanti cautela. Similarly the words "notifications" also, it is possible, has been added to section 21 of the General Clauses Act (X of 1897) with the same object. Conferring of the powers by notification which is contemplated by section 4 of the Act is in substance conferring of the powers by orders which are published by notifications. It is the orders passed by the Government that really confer the power and the notification is only the particular mode of publishing those orders of the Government. As section 4 of the Mulgeni Rent Enhancement Act read with section 15 of the Madras General Clauses Act confers on the Local Government power to issue orders as regards matters in question by notification, it seems to me

A that even under the existing General Clauses Act, the Local Government has got power to rescind and revoke the prior orders and issue fresh orders by notification.

B As regards the draft notification to be issued, that suggested by the Law Drafting Department is more in accordance with the section and may be adopted.

C I should like however to suggest that it is probably expedient that certain formal amendments should be made to section 15 of the Madras General Clauses Act to bring it in accordance with the General Clauses Act (X of 1897) as amended by Act I of 1903, the Bengal General Clauses Act (I of 1899) and Bombay General Clauses Act (I of 1904) by adding the words "or notifications" after the word "orders" in the two places where that word occurs in section 15 of the Madras General Clauses Act.

Madras,
8th October 1928

Advocate General.

Law (Genl.) Dept.

C No. 4177A.

Secy.

Please see the Advocate General's opn. at pp 5-7 ante.

2. He is of opinion that even under the existing General Clauses Act, the Local Govt has got power to rescind and revoke the prior orders and issue fresh orders by notification

A on p 7 NF

B on p 7 NF

As regards the draft notification to be issued, he says that the one suggested by Law (Drafting) may be adopted. A revised draft on these lines is submitted for approval. After issue, the case may be sent to Law (Drafting) Dept. for drafting suitable amendments to the General Clauses Act on the lines suggested by the Advocate General at C on p 7 NF.

N on p 5 NF

LW 16/19t

16.10.28

17-10-28

C1

Draft may now be sent to the Secy for such changes or changes

16/19x

SECRETARY TO GOVERNMENT
19 OCT. 1928
LAW DEPARTMENT

Sectt. II-5 (3)—25,000—25-11-25. (6)

Law (Genl) DEPARTMENT.

	Date.	Initials.
When received for Fair-copying.		
When copied ..		
When examined ..		
When signed ..		
When despatched ..		

The Malgeni Rent Enhancement Act, 1920 - Smtn Kamara - Coondapoor division - Retransfer of certain villages to jurisdiction of the Revenue Divisional officer - Coondapoor.

READ AGAIN G.O. No. 1573 Lawgl, dated 7-5- 1924.

" " " " " " 192

READ ALSO:—

C. No. 3858A From the Bd of Revenue Ref A, No. 3279-28-2 dated 14-9-1928.

" " " " " " 192

" " " " " " 192

ORDER.

Mde.

No. , dated 192

The following notification will be published in the Fort St George Gazette

Notification

Above order notification at 3 of

To the Board of Revenue ARTS

To the G.P. with for publication of the notification in the Fort St George Gazette.

KA. 26/9/28

Gb 27/9/28

Revised Draft

Scott. II-5 (b)—8,004 —26-10-27. (6)

Law (General) DEPARTMENT

	Date.	Initials.
When received for Fair-copying.		
When copied ..	27/5	
When examined ..		
When signed ..		
When despatched ..		

THE MULGENI RENT ENHANCEMENT ACT, 1920 - South Kanara - Coondapoor division - Retransfer of certain villages to jurisdiction of the Revenue Divisional Officer, Coondapoor -

READ AGAIN G.O. No. 1513 Law (G), dated 7-5-1924 192 .

" " " " " " 192 .

READ ALSO :—

C. No. 3858 A From the Board of Rev. L.R. & S., No. Ref. A- 3279-28-2, dated 14-9-28 192 .

" " " " " " 192 .

" " " " " " 192 .

ORDER.

No. 3545, dated 28/10/192 8.

Mis.

To

The Board of Rev. L.R.&.S.
The Supdt. Govt. Press for publication of the notification in the Fort St. George Gazette.

The following notification will be published in the Fort St. George Gazette.

Notification.

In exercise of the powers conferred by section 4 of the Mulgeni Enhancement Act, 1920 (Madras Act XIII of 1920) read with section 15 of the Madras General Clauses Act, 1891 (Madras Act I of 1891), and in supersession of the order and notification of the Local Government in Law (Genl.) Department No. 395... dated 7-5-24 published at page 556 of the Fort St. George Gazette dated 13-5-24, the Governor in Council is hereby pleased to confer and impose with effect from the 1st

day of ~~October~~ November 1928 on the Revenue Divisional Officer, Coondapoor, all the powers and all the duties conferred or imposed on the Collectorby the first mentioned Act for the disposal of all applications filed and now pending disposal before the Divisional Officers of Mangalore and Puttur under section 5 of the said Act or which may hereafter be filed under the said section 5 in respect of the lands in the villages of Udipi and Karkal taluks specified hereunder":—

Udipi Taluk	Karkal Taluk
Shirva	Suda
Mudabettu	Paladka
Padura	Belmannu
Innanje	Puchchamogaru
Uliyaragoli	Puttige
Belpu	Kallamundkuru
Kalturu	Nitte
Belle	Kalya
Palmaru	Ninjuru
Kutyaru	Mudakodi
Tenka	Bola
Mallaru	Arambodi
Bada	Kedinje
Mattu	
Santuru	
Nandikuru	

16.10.28.

17-10-28